

REMARKS

In the Office Action, the Examiner rejected claims 1-21. In response, Applicants have added new claim 22 and provided the following remarks. In view of the amendments and the following remarks, the Applicants respectfully request reconsideration and allowance of all pending claims 1-22.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1-5, 8-11, and 17-21 under U.S.C. § 102(b) as anticipated by Chen et al (U.S. Patent Application Publication No. 2003/0211859). Applicants respectfully traverse this rejection.

Legal Precedent

Applicants remind the Examiner that, during patent examination, the pending claims must be given an interpretation that is reasonable and consistent with the specification. *See In re Prater*, 415 F.2d 1393, 1404-05, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969); *see also In re Morris*, 127 F.3d 1048, 1054-55, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); *see also* M.P.E.P. §§ 608.01(o) and 2111. Interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *See In re Cortright*, 165 F.3d 1353, 1359, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); *see also* M.P.E.P. § 2111. As further explained in M.P.E.P. § 2111, the words of the claim must be given their plain meaning unless the applicant has provided a clear definition in the specification. *See In re Zletz*, 893 F.2d 319, 321, 13 U.S.P.Q.2d 1320,

Serial No. 10/628,660
Amendment and Response to Office Action
Mailed May 5, 2005

1322 (Fed. Cir. 1989). Again, the plain meaning refers to an interpretation by those of ordinary skill in the art. *See In re Sneed*, 710 F.2d 1544, 218 U.S.P.Q. 385 (Fed. Cir. 1983).

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under Section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Specifically, the prior art reference also must show the *identical* invention “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

Features of Independent Claim 1 Omitted from Chen

Independent claim 1 recites, *inter alia*, “the transceiver unit comprising: a communication interface to facilitate communication *between the transceiver and an access network unit over an undedicated public network.*” (Emphasis added.) In regard to claim 1, the Examiner specifically stated:

Regarding claim 1, Chen et al discloses a transceiver unit (base station 204, with transmit unit 268 and receive unit 254, see fig. 2 [0025], p. 3 [0026]) for use with a wireless communication system (group communication system 100, see fig. 1, p. 2, [0017]), the transceiver unit comprising: a communication interface (base station controller, BSC 110, see fig. 1, p. 2, [0019]) to facilitate communication between the transceiver and an access network unit (group call server performs call initiations and interacts with the communication devices, see p. 2, [0019], p. 3, [0029]) over an undedicated public network (IP protocol network 108, see p. 2, [0019]).

Office Action mailed on May 5, 2005, p. 2.

The Applicants respectfully assert that Chen does not anticipate the subject matter claimed in the instant application for several reasons. First, Chen does not teach or suggest an “undedicated public network,” as recited by independent claim 1. Second, the communications interface in Chen is designed to facilitate communications between individual communications devices and the group communication server, and not with the transceiver units. Third, Chen has no equivalent to the claimed access network unit.

In regard to the first point, the IP network of Chen is not an undedicated public network. *See* Chen, p. 1, [0004]-[0005]. No *public* IP Address is registered for the transceiver or for any other unit, as required for access to a *public* network such as the

Internet. *See* Exhibit 1. Thus, Chen discloses only a private or isolated network. Consequently, the Chen reference does not disclose communication over an undetected public network, as claimed.

In regard to the second point, in contrast to the recited language from claim 1, “to facilitate communication between the transceiver and an access network unit,” the purpose of the group communication system in Chen is to facilitate communications between individual communication devices (CDs) and the group call server (GCS). *See* Chen, p. 2, [0017]; *see also* Chen, p. 2, [0028]-[0035]. To further this communication, IP addresses are assigned directly to the CDs themselves for direct communication with the GCS. *See* Chen, p. 2, [0020]. Even if, *arguendo*, the GCS could be considered an access network unit, it facilitates communication with the CDs, not a transceiver unit, as claimed.

In regard to the third point, Chen discloses no equivalent to the claimed access network unit. The purpose of the GCS in Chen is to store media for delivery to the individual CDs and to determine when the number of participants in the point-to-multipoint communication system requires a “multicasting” mechanism for the delivery of the media. *See* Chen, p. 1, [0006]; *see also* Chen, p. 4, [0037]-[0038]. The communications disclosed in Chen are exclusively between the GCS and the individual CDs. *See* Chen, p. 1, [0002]; *see also* Chen, p. 2, [0017]. Chen neither shows nor discloses a connection to the general phone service network outside of the predefined

group, and, in fact, notes that “the voice and/or data traffic in GCS may be different from the classical one-to-one phone call.” Chen, p. 3, [0028]. In contrast, one of ordinary skill would recognize that an access network unit processes calls between a telephone system and transceivers. *See Specification*, p. 3, ll. 16-19; p. 8, l. 24 - p. 9, l. 3; and fig. 2.

In view of these deficiencies, the cited reference cannot anticipate independent claim 1 as its dependent claims. For these reasons, the Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 102 and allow claim 1 and its depending claims.

Features of Independent Claim 17 Omitted from Chen

Independent claim 17 recites, *inter alia*, “at least one routine for facilitating communication of information over an *undedicated public network* between at least one transceiver unit . . . and an *access network unit*.” (Emphasis added.) In regard to claim 17, the Examiner specifically stated:

Regarding claim 17, Chen et al further teaches a tangible medium (general purpose processor, DSP, ASIC, FPGA or programmable logic device, see p. 6, [0059]) having a software program (logic block, module, and algorithm steps described can be implemented as computer software) for use in a wireless communication system (group communication system 100, see p. 2, [0017]), the software comprising: at least one routine for facilitating communication of information (call set-up process, see fig. 6, p. 4, [0039]) over an undedicated public network (IP network 108, see fig. 1, p. 2, [0019]) between at least one transceiver unit (base station 204 with a transceiver and receiver unit, see fig. 2, p. 2, [0025]), which is adapted to communicate over an air interface with portable communication devices (voice and/or data is exchanged between base station 204 and mobile station 206 over via an air interface, see p. 2, [0022]), and an access

network unit (group call server 102, fig. 1, p. 2, [0017]), which is adapted to process information communicated with the at least one transceiver (mobile station 206 with transmit and receive unit, and call set-up process in which mobile station communication devices sends a group call request 604 to group call server in order to set up a group call, see fig. 2 and fig. 6, p. 2, [0023], p. 4, [0039]).

Office Action mailed on May 5, 2005, pp. 4-5.

As discussed in detail above for independent claim one, the Chen reference does not disclose or teach an undedicated public network, facilitating communication between at least one transceiver unit and an access network unit, or an access network unit. In view of these deficiencies, the cited reference cannot anticipate independent claim 17, which also contains these features.

In view of these deficiencies, the cited reference cannot anticipate independent claim 17 as its dependent claims. For these reasons, the Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 102 and allow claim 17 and its depending claims.

Features of Independent Claim 20 Omitted from Chen

Independent claim 20 recites, *inter alia*, “receiving information by a transceiver unit via an air interface; and processing the information to form an information packet suitable for transmission to an access network unit via an undedicated public network.” (Emphasis added.) In regard to claim 20, the Examiner specifically stated:

Regarding claim 20, Chen et al further discloses a method of producing an information packet in a wireless communication system, the method comprising the acts of: receiving information by a transceiver unit via an air interface (mobile station 206 communicating with base station 204 over an air interface, see p. 2, [0022]); and processing the information to form an information packet (base station demodulator 256 processes received signal and processor 258 decodes the symbols to recover the data and messages, see fig. 2, p. 2, [0025]) suitable for transmission to an access network unit via an undedicated public network (BSC sends media 622 that it has received from communication device to group call server, see fig. 6, p. 5, [0048]).

Office Action mailed on May 5, 2005, pp. 5-6.

As set forth above, independent claim 20 clearly calls for information to be processed into the form of a “packet” suitable for transmission via a public network *after* the information is received by a transceiver via an air interface. In other words, the “packet” is not transmitted over the air interface. In sharp contrast, the Chen reference repeatedly refers to the “packet” as being transmitted over the air interface 208 between the base station 204 and the mobile station 206. *See* Chen, paragraphs 22-26. Indeed, as discussed previously, because the mobile units 104/206 are communication devices that have an IP address, the “packets” *must* be transmitted over the air interface 208 in the Chen reference, otherwise the system described in the Chen reference would not operate. Therefore, the Chen reference clearly does not disclose the subject matter set forth in independent claim 20.

In addition to this deficiency, as discussed in detail above for independent claim 1, Chen does not disclose or teach either an undedicated public network or an access network unit.

In view of these deficiencies, the cited reference cannot anticipate independent claim 20 or its dependent claims. For these reasons, the Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 102 and allow claim 20 and its depending claims.

Claim Rejections under 35 U.S.C. § 103(a)

Under 35 U.S.C. § 103(a), the Examiner rejected claims 6 and 7 as unpatentable over Chen in view of Semper et al (U.S. Patent Application Publication No. 2005/0014509); rejected claims 12-14 as unpatentable over Chen in view of Eilers et al, *Reradiation (Echo) Analysis of a Taper Tower Section Supporting a Side-Mounted DTV Broadcast Antenna and Corresponding Azimuth Pattern*, IEEE Transactions on Broadcasting, Vol. 47, No. 3, September 2001 [hereinafter Eilers]; and rejected claims 15 and 16 as unpatentable over Chen in view of Ketonen (U.S. Patent No. 6,104,917).

Removal of the Semper Reference under 37 C.F.R. § 1.131

The Examiner rejected claims 6 and 7 as unpatentable over Chen in view of Semper. In view of the earlier date of invention of the subject matter disclosed and claimed in the present application, Applicants elect to remove the Semper reference pursuant to 37 C.F.R. § 1.131.

Under Rule 131, Applicants may remove a reference by filing an appropriate declaration that establishes invention of the claimed subject matter by Applicants prior to the effective date of the reference relied upon in the rejection. Prior invention may be shown by proving conception of the invention prior to the effective date of the reference coupled with reasonable diligence from prior to the effective date of the reference to a subsequent reduction to practice. To establish conception, the declaration may “establish possession of either the whole invention claimed or something falling within the claim[s].” M.P.E.P. § 715.02. Due diligence may be shown by “evidence of activity aimed at reducing the invention to practice, either actually or constructively.” *English v. Ausnit*, 38 U.S.P.Q. 2d 1625 (B.P.A.I. 1993). This evidence does not have to show daily activity, but only that, in the light of all circumstances, the actions taken were reasonable to reduce the invention to practice. *Hybridtech v. Abbott Laboratories*, 4 U.S.P.Q. 2d 1001 (C.D. Cal. 1987).

Serial No. 10/628,660
Amendment and Response to Office Action
Mailed May 5, 2005

Accordingly, Applicants submit the enclosed Rule 131 Declaration of Applicant Vivek Kansal to demonstrate that the invention claimed in the present application was conceived prior to the effective date of the Semper reference. Further, Applicants also submit the enclosed Rule 131 Declaration of Michael G. Fletcher, Applicants' legal representative, to demonstrate reasonable diligence in reducing the claimed subject matter to practice.

Applicants submit that the effective date of the Semper reference is July 16, 2003. In paragraph 3 of the Kansal Declaration, the Applicant declares that the subject matter disclosed and claimed in the above-referenced application was conceived prior to July 16, 2003. In support of this statement, Applicant submitted Exhibit A to demonstrate conception of the claimed subject matter prior to July 16, 2003. The subject matter of all independent claims can be found within this document. Specifically, the subject matter of independent claim 1 can be found in Exhibit A on page 2, and the subject matter of independent claims 17 and 20 can be found in Exhibit A on pages 3 and 4.

Applicants also submit the Rule 131 Declaration of Michael G. Fletcher as evidence of reasonable diligence in reducing the claimed subject matter to practice. As stated in the declaration, a draft of the application was transmitted to Lucent Corporate Counsel, Jimmy Goo, on Tuesday, July 15, 2003. Mr. Goo reviewed the application and responded with questions on Wednesday, July 23, 2003. In response, on Thursday, July 24, 2003, a teleconference was requested with Mr. Goo to discuss the application. Mr. Goo responded

the next day, Friday, July 25, 2003, to schedule a conference on Monday, July 28, 2003.

Immediately after this conference, Mr. Goo advised the outside counsel to proceed with filing the application, and the application was filed on the same day. Thus, the present invention was diligently reduced to practice from just prior to the effective date of the Semper reference to the filing of the present application.

Applicants assert that these Rule 131 Declarations are sufficient to demonstrate conception of the claimed invention prior to July 16, 2003 (the effective date of the Semper reference), coupled with reasonable diligence from prior to July 16, 2003 until the reduction to practice of the claimed subject matter on July 28, 2003. Accordingly, in view of the earlier conception and reasonable diligence from immediately before the effective dates of the cited reference until the reduction to practice, Applicants respectfully request that the Examiner remove the Semper reference from consideration and withdraw the rejections of claims 6 and 7 based on this reference.

The Eilers Reference Does not Obviate the Deficiencies of the Chen Reference

The Examiner rejected claims 12-14 as unpatentable over Chen in view of Eilers. Office Action mailed May 5, 2005, p. 7. The Examiner claims that Chen discloses all of the invention, except for “a structure on which the at least one antenna resides,” as recited in claim 12, “wherein the structure comprises a tower,” as recited in claim 13, or “wherein the structure comprises a building,” as recited in claim 14. Office Action mailed May 5, 2005, p. 8.

Legal Precedent

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d. 1430 (Fed. Cir. 1990). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985).

As discussed in detail above for independent claim 1, Chen does not disclose or teach an undedicated public network, facilitating communication between at least one transceiver unit and an access network unit, or an access network unit. The Eilers reference does not cure these deficiencies, and the Examiner has not even asserted that it does. Thus, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103 and allowance of claims 12-14.

The Ketonen Reference does not Obviate the Deficiencies of the Chen Reference

The Examiner rejected claims 15 and 16 as unpatentable over Chen in view of Ketonen. The Examiner claims that Chen discloses all of the invention, except for “a structure for housing the communication interface,” as recited in claim 15, or “wherein the structure comprises a cabinet,” as recited in claim 16. Office Action mailed May 5, 2005, p. 9.

As discussed in detail above for independent claim 1, Chen does not disclose or teach an undedicated public network, facilitating communication between at least one transceiver unit and an access network unit, or an access network unit. The Ketonen reference does not cure these deficiencies, and the Examiner does not even assert that it does. Thus, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103 and allowance of claims 15 and 16.

Conclusion

The Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Serial No. 10/628,660
Amendment and Response to Office Action
Mailed May 5, 2005

Respectfully submitted,

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